

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

DIRECTV, INC., )  
                    )  
Plaintiff,       )  
                    )  
v.                  ) 1:04-cv-0171-DFH-WTL  
                    )  
ROBERT APPLEGATE, )  
                    )  
Defendant.       )

**REPORT AND RECOMMENDATION REGARDING**  
**MOTION TO SET ASIDE DEFAULT JUDGMENT**

Robert Applegate has filed a motion asking the Court to set aside the default judgment entered against him because he is not the Robert Applegate named in the complaint. A hearing was held before the undersigned on August 14, 2006, at which Mr. Applegate, his wife and his son appeared, as did counsel for Plaintiff DirecTV. Mr. Applegate testified that he is Robert W. Applegate, Jr., and that his father, Robert W. Applegate, Sr., is the person who resided at 23669 Fall Road in Cicero, Indiana, the address at which the complaint and summons was served in this case. Mr. Applegate testified that he never resided at the Fall Road address and that he has never had DirecTV service. He further testified that he has had no contact with his father since Christmas eight or nine years ago and that he does not know where his father currently lives. Mr. Applegate's son, Robert W. Applegate III, corroborated this testimony.

The Court finds the testimony at the hearing that Robert W. Applegate, Jr., is not the person named as the Defendant in this case to be credible, and therefore makes the following recommendation to District Court Judge David F. Hamilton:

The motion to set aside the default judgment should be denied, inasmuch as there is no evidence that the default judgment against the Robert Applegate who resided on Fall Road was

improper. However, inasmuch the Final Judgment that was entered was sent to Robert Applegate at Mr. Applegate, Jr.'s address in English, Indiana, the judgment should be modified to reflect that it is against Robert Applegate at 23669 Fall Road in Cicero, Indiana. This Recommendation and the modified Final Judgment should be served by the Court on both the Cicero and the English addresses, but any subsequent service by the Court or by DirecTV should not be sent to the English, Indiana address, as Mr. Applegate, Jr., will no longer need to be involved in this case in any way.

ENTERED: 08/17/2006

Distribution:

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William T. Lawrence

Hon. William T. Lawrence, Magistrate Judge  
United States District Court  
Southern District of Indiana